TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 174.

FRANK H. PIERCE, PETITIONER,

vs.

THE TENNESSEE COAL, IRON AND RAILROAD COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 9, 1908.
CERTIORARI AND RETURN FILED DECEMBER 10, 1908.

(16,682.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 11, 1898.

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No. .....

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

..... Term, ...

TRANSCRIPT OF RECORD.

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Plaintiff in Error,

vs.

FRANK H. PIERCE,
Defendant in Error,

FRANK H. PIERCE,
Plaintiff in Error,

vs.

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

FILED..... .....1897.

PETITION TO REMOVE CAUSE TO CIRCUIT COURT OF THE UNITED STATES.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Frank Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

To the Honorable Judges of the Circuit Court of the United States, for the Southern Division of the Northern District of Alabama:

Your petitioner, the Tennessee Coal, Iron & Railroad Company, a corporation, respectfully shows that it is the defendant in a certain suit which was instituted by the said Frank Pierce against the petitioner, the Tennessee Coal, Iron & Railroad Company, a corporation, in the Circuit Court of Jefferson county on the 22d day of January, 1892.

That said suit has not been tried but is now pending for trial in the said Circuit Court of Jefferson county, Alabama, and that petitioner desires to remove the same in and to the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Your petitioner further states and alleges that in the said above mentioned suit, there is a controversy between the plaintiff, a citizen of the State of Alabama, in which said suit has been instituted, and a citizen of another state, to-wit, the State of Tennessee. Petitioner states that

at the time of the commencement of said suit the said plaintiff was and still is a citizen of the State of Alabama, and a resident of said State. That your petitioner against whom said suit was brought, was at the time of the institution thereof, and is now a citizen of the State of Tennessee, and is a corporation organized and existing under the laws of the State of Tennessee, and is a non-resident of the State of Alabama. Your petitioner further states that through prejudice and local influence, your petitioner will not be able to obtain justice in said Court, that is to say, the Circuit Court of Jefferson county, Alabama, or in any other State Court, to which your petitioner may, under the laws of said State have the right, on account of such prejudice and local influence, to remove said cause. That said suit was brought for the recovery of damages for the breach of a contract of employment made in settlement of a claim for personal injuries received by the plaintiff while in the employ of the defendant corporation, and claims as such damages the sum of fifty thousand dollars. That the amount in dispute or controversy in said suit exceeds in value the sum of $2,000 exclusive of costs and interest.

Your petitioner further states that it has filed herewith affidavits of the truth of this petition, and of the fact that your petitioner, on account of prejudice and local influence, will not be able to obtain justice in said City Court or any other court to which your petitioner may, under the laws of said State, have the right, on account of such prejudice and local influence, to remove said cause.

Your petitioner therefore prays that the said affidavits may be accepted as good and sufficient, and that the said suit may be moved in said Circuit Court of the United States for the Southern Division of the Northern District of Alabama, and to the end also that said removal may be perfected; that such order be made in the premises as the nature of the case may require.

WALKER PERCY,
Attorney for Petitioner.

United States of America, Southern Division of the Northern District of Alabama—

Before me, W. I. Grubb, a Notary Public in and for said county and State, personally appeared Walker Percy, who being duly sworn deposes and says that he is one of the attorneys for the petitioner in the above entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the statements and allegations therein contained are true as affiant verily believes.

WALKER PERCY.

Sworn to and subscribed before me this the —— day of March, 1896.

W. I. GRUBB,
Notary Public.

[Endorsed.]
Filed March 23, 1896.
N. W. TRIMBLE, Clerk.

AFFIDAVIT OF P. J. ROGERS.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Frank Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

United States of America, Southern Division of the Northern District of the State of Alabama—

Before me, the undersigned, a Notary Public in and for said county, in said State, personally appeared P. J. Rogers, who being first duly sworn, deposes and says, that he is superintendent of the defendant, the Tennessee Coal,

Iron and Railway Company, at Pratt City, Alabama, and has been such superintendent for three months, and has been a resident of Jefferson county, Alabama, for sixteen years, and has been in the employ of the defendant corporation and its predecessors in said county and State for fifteen years; affiant says that he makes this affidavit for and on behalf of the said Tennessee Coal, Iron and Railroad Company, defendant herein, and that he is authorized to make this affidavit on its behalf; affiant says that he is familiar with the sentiment existing in regard to corporations in the county of Jefferson and State of Alabama, and in its vicinity; that he has traveled over all the counties in this State in connections with his business for the last eight years; that he knows the general sentiment prevailing with regard to suits against corporations by individuals resident of the State of Alabama, in said county of Jefferson and vicinity; that there is a very general feeling of prejudice now existing against corporations in the said county and its vicinity in such suits, especially in suits arising out of personal injuries, received by employes of corporations, whether such cases involve such injuries, either directly or indirectly; that such feeling of prejudice manifests itself in the excessive verdicts rendered in cases of this character in said county and its vicinity; that recently in the adjoining county of Walker, in a personal injury suit for the death of a passenger, a jury rendered a verdict against a railroad corporation for $44,000, which the trial Court set aside as excessive; that other large verdicts have been rendered in suits of this character; and that there is a very general sentiment among a large class of the people of said county and vicinity against corporations; that there is now in progress a political campaign in which a Governor and members of the State Legislature are canvassing the State for nomination; that one of the issues of said campaign is the so-called anti-commissary and two-weeks' pay bill laws; that the purpose of these laws is to prevent corporations from operating commissaries or company stores in connec-

tion with their ordinary business, and to compel corporations who are employers of labor to pay their labor every two weeks, and that a great deal of anti-corporation sentiment has been stirred up because of the stirring up of these issues; that great hostility has arisen to all corporations, and especially to such corporations as are engaged in carrying on commissaries in connection with their general business, as your petitioner is; that candidates for the State Senate and House of Representatives are running distinctly on this issue; and that the sentiment of the people is very much stirred up over these questions, and that such sentiment will prejudice a large class of the citizens of said county and adjoining counties, such as Walker and Bibb, against this petitioner; and affiant says that on account of the prejudice and local influence against said defendant, the Tennessee Coal, Iron & Railroad Company, your petitioner will not be able to obtain justice in the said Circuit Court of Jefferson county, Alabama, or any other State Court to which said defendant may under the laws of said State have the right, on account of such prejudice and local influence, to remove said cause.

P. J. ROGERS.

Sworn to and subscribed before me this 23d day of March, 1896.

W. I. GRUBB,
Notary Public.

[Endorsed,]
Filed March 23, 1896.
N. W. TRIMBLE, Clerk.

MARCH TERM, 1896.

Pleas had at a regular term of the Circuit Court of the United States for the Southern Division of the Northern

District of Alabama, begun and held at the city of Birmingham in the United States Court Room in said division of said district, the first Monday of March, it being the second day thereof, in the year of our Lord one thousand eight hundred and ninety-six, and of the independence of the United States of America the one hundred and twentieth year: Present the Hon. John Bruce, Judge of the District Court of the United States for the Northern and Middle Districts of Alabama, sitting and presiding as Circuit Judge; Emmet O'Neal, United States Attorney; J. C. Musgrove, United States Marshal and N. W. Trimble, Clerk.

* * * * * * *

MONDAY MORNING MARCH 23, 1896.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

249.

Upon consideration of the application and petition and writing of defendant in the above entitled cause, and the affidavits admitted in support thereof, to remove said cause from the Circuit Court of Jefferson county, Alabama, to this Court on account of prejudice and local influence, it is considered that said application be granted and the said cause be and is hereby removed to this Court from the Circuit Court of Jefferson county, State of Alabama.

The Clerk will issue a writ of certiorari to the Clerk of the said Circuit Court of Jefferson county, Alabama, for a certified transcript of the proceedings in said cause.

(Signed) JOHN BRUCE, Judge.

[Endorsed.]

Filed March 23, 1896.

N. W. TRIMBLE, Clerk.

CERTIORARI.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Frank Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

The President of the United States of America, to the Clerk of the Circuit Court of Jefferson County, State of Alabama—Greeting:

Whereas, it has been represented and shown to the Circuit Court of the United States for the Southern Division of the Northern District of Alabama, that a certain suit was commenced in the Circuit Court of Jefferson county, Alabama, wherein Frank Pierce, a citizen of the State of Alabama, was plaintiff, and the Tennessee Coal, Iron and Railroad Company, a body corporate, organized and existing under the laws of the State of Tennessee, and a citizen of said State, was defendant, on the 22d day of January, 1892; and

Whereas, a proper petition supported by proper affidavits has been filed in this Court, to remove the same to this Court, on the ground that from prejudice and local influence the said defendant will not be able to obtain justice in said Court, or any other State Court to which the petitioner may under the laws of said State, have the right on account of such prejudice and local influence, to remove said cause.

Now, therefore, these are to command you, that you forthwith certify, or cause to be certified, to the said Circuit Court of the United States for the Southern Division of the Northern District of Alabama, a full, true and complete copy of the record of pleadings in said cause, in which the said petition for removal was filed aforesaid, plainly

and distinctly, and in as full and ample a manner as the same now remains before you, together with this writ, so that the said Circuit Court may be able to proceed thereon, and do what to them shall appear of right ought to be. Herein fail not.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United [SEAL] States, and the seal of said Circuit Court hereto affixed, this the 23d day of March, A. D. 1896.

N. W. TRIMBLE, Clerk.

[Endorsed.]

Marshal's Return.

Birmingham, Ala., March 24, 1896.

Executed by serving a copy of the within Certiorari on the Circuit Clerk of Jefferson county, Alabama.

J. C. MUSGROVE, Marshal.

JOHN R. PERKINS, Deputy.

[Endorsed.]

Filed in Clerk's office March 25th, 1896.

N. W. TRIMBLE, Clerk.

RECORD FROM CIRCUIT COURT OF JEFFERSON COUNTY.

Summons and Complaint.

THE STATE OF ALABAMA, Jefferson County. } Circuit Court.

To any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon the Tennessee Coal, Iron & Railway Company, to appear before the Cir-

cuit Court to be held for said county, at the place of holding the same within thirty days from service of this process, then and there to answer the complaint of Frank H. Pierce.

Witness my hand the 22d day of January, 1892.

FERGUS W. MCCARTHY, Clerk.

STATE OF ALABAMA, Jefferson County. } In the Circuit Court of Alabama for said County.

Frank H. Pierce, Plaintiff,

vs.

The Tennessee Coal, Iron & R. R. Co., a corporation, Defendant.

The plaintiff claims of the defendant, a body corporate, incorporated under the laws of the State of Tennessee, and resident and doing business in said State of Alabama, county of Jefferson, the sum of fifty thousand dollars, as damages for the breach of a certain contract in writing entered into between the plaintiff and defendant by its agent, in substantially the words and figures following, to-wit: 4th of June, 1890, whereas, I, F. H. Pierce, while in the employ of the Tennessee Coal, Iron & Railway Company, Pratt Mines Division, as a machinist, was seriously hurt by a trip of tram cars on the main slope of the mine, known as Slope No. 2, and operated by the Tennessee Coal, Iron & Railroad Company, under circumstances which I claim render the said Company liable to me for damages, but, whereas, they disclaim any liability for said accident or injuries to me resulting from same, and both parties being desirous of settling and compromising said matter; and whereas, the said Tennessee Coal, Iron & Railroad Company did make me a proposition on the——day of November, 1888, said accident having occurred on the 21st day of May, 1888, that they would furnish me such supplies from the com-

missary at No. 2 prison, as I might choose to take; pay me regular wages while I was disabled, and give me my coal and wood for fuel at my dwelling, and the benefit of the convict garden at No. 2; and whereas said proposition was accepted by me and carried out by the said Company; and, whereas, in May, 1889, after I had resumed work, a further proposition was made to give me work, such as I could do, paying me therefor the wages paid me before said accident, that is $60 a month, and in addition free house rent; and, whereas, said agreement has been faithfully kept by both parties; and, whereas, on the 4th day of June, 1890, it is mutually agreed between myself and the said Company that it will be better to give me the house rent than the supplies of about equal amount from the commissary. Now, therefore, it is agreed that in view of the above propositions which have been faithfully carried out; that my wages from this date are to be $65 per month, and, in addition I am to have free of charge, my coal and wood necessary for my household use at my dwelling, and the same benefit from the garden as is had by others who are allowed the garden privilege, and I, on my part, agree and bind myself, to release the said company from any and all liability for said accident, or from injuries resulting to me from it, or the effects of it, and agree that this is to be a full and satisfactory settlement of any and all claims which I might have against said Company.

F. H. PIERCE,
G. B. MCCORMACK.

WITNESSES—
P. J. Rogers,
Erskine Ramsey.

And plaintiff avers that in and by said agreement, the said defendant, for the consideration therein mentioned, became liable to pay to the plaintiff monthly during his life the wages stipulated therein, to be paid to him monthly, to-wit, the sum of sixty-five dollars, and to fur-

nish him at his dwelling, free of charge, the coal and wood necessary for his household use, and to allow him the same benefit from the garden of the said defendant as is had by others, who are allowed the garden privilege; and plaintiff avers that others then had, and since have had, the free use of the Garden of said defendant for vegetables for domestic use, and that this privilege is worth the sum of five dollars per month; and plaintiff avers that he has at all times been ready and willing and offered to do for said defendant such work given to him to do as he was able to do, and that he has labored at the same for such reasonable time as he was able to work and bound to work under said contract.

And plaintiff avers that by the injuries received by him from said accident mentioned in said contract, he was permanently disabled in the use of his legs and hands, and that he was so otherwise injured thereby that his strength and health is such that he is incapacitated to reasonably do more work for the said defendant than he has done and offered to do since the said contract was entered into. And that he has at all times since the said contract was entered into fully carried out and performed the stipulations on his part to be done and performed. But the plaintiff avers that the said defendant has, without any reasonable ground for so doing, abandoned said contract and refused to carry the same out, claiming that there is no obligation upon it to pay plaintiff the wages therein stipulated to be paid longer than it suits its pleasure to do so, and accordingly said defendant has wholly neglected and refused to be governed by the terms of said contract, and has failed and refused to pay plaintiff the sum of sixty-five dollars for six months last past, before the commencement of this suit, and has failed and refused to furnish the defendant at his dwelling the coal and wood necessary for his household use for the same period, and plaintiff avers that the value of the coal and owod necessary for his household use is worth the sum of five dollars per month, and that said defendant has wholly

and purposely disregarded and refused to abide by the obligations of said contract, for the said period of six months last past, before the commencement of this suit, and has wholly and entirely abandoned said contract, and discharged the plaintiff from its service.

Wherefore, the said defendant became liable to pay to the plaintiff his reasonable damages, which plaintiff avers was and is the sum of fifty thousand dollars for its breach and abandonment of the stipulations of the said contract above set out, and being so liable, and in consideration thereof, the said defendant promised to plaintiff, on, to-wit, the first day of February, 1891, to pay plaintiff the sum of fifty thousand dollars, but though often requested so to do, has hitherto neglected and refused, and still neglects and refuses to pay the same, to the damage of the plaintiff fifty thousand dollars, for which he sues.

F. S. FERGUSON,
BRICKELL, GUNTER & SEMPLE,
Plaintiff's Attorneys.

The plaintiff demands a trial by a jury in the above stated cause.

F. S. FERGUSON,
BRICKELL, GUNTER & SEMPLE,
Plaintiff's Attorneys.

[Endorsed.]

Filed in office this 22d day of January, 1892.

FERGUS W. MCCARTHY, Clerk.

[Sheriff's Return.]

Received in office this 22d day of January, 1892.

J. S. SMITH, Sheriff.

Executed this 1st day of February, 1892, by leaving a copy of the within summons and complaint with J. G. Moore, assistant superintendent of the Tennessee Coal, Iron and Railway Company, defendant.

J. S. SMITH, Sheriff.

By J. E. BLACKWELL, Deputy Sheriff.

DEMURRER.

Frank H. Pierce

vs.

The Tennessee Coal, Iron & Railroad Co.

Circuit Court of Jefferson County.

Defendant demurs to plaintiffs complaint, and assigns the following grounds of demurrer:

1. Because said complaint purports to set out in haec verba the contract relied upon, and it appears from the terms of said contract that said contract was a contract of hiring, terminable at the will of either party to said contract, and not a contract of hiring for life as averred by plaintiff, and it appears from the averments of plaintiff's complaint that defendant in terminating the contract of hiring has only exercised its legal right under the contract.

2. Because said complaint purporting to set out in haec verba the contract sued upon, it appears from said contract, that said contract was a contract of monthly hiring, and there is no averment to the complaint to show that plaintiff was discharged at any other time than the end of the month.

3. Because it appears from the contract set out and sued upon that the defendant was to pay plaintiff sixty-five dollars a month and furnish plaintiff with a house and supplies only so long as plaintiff remained in the service of defendant, and it nowhere appears where defendant failed to pay plaintiff, so long as plaintiff was retained in the service.

4. Because the contract sued upon being set out in the complaint in haec verba with the signatures thereto, it does not appear that the Tennessee Coal, Iron & Railway Company was a party to said contract or bound by it.

5. Because the contract sued upon being set out in the complaint in haec verba with the signatures thereto, it appears that the only parties to said contract were plaintiff and G. B. McCormack, and it does not appear that G. B. McCormack had authority to bind defendant to said contract or intended to bind said defendant by said contract.

6. Because the averments of plaintiff's complaint, considered in connection with the contract sued upon, failed to show that the act of McCormack in signing said contract made defendant a party to said contract or bound by it.

R. H. PEARSON,
WALKER PERCY,
Attorneys for Defendant.

Filed January 29, 1894.

FERGUS W. MCCARTHY, Clerk.

JUDGMENT ENTRY.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

On this the 29th day of January, 1894, come the parties by their attorneys, and this cause coming on to be heard, the defendant is allowed to withdraw pleas and file demurrers to the complaint, and the demurrer to the complaint sustained by the Court, plaintiff declining to amend his complaint, the Court rendered judgment in favor of the defendant.

It is therefore considered by the Court that the defendant have and recover of the plaintiff all the costs in this behalf expended, which execution may issue.

APPEAL BOND.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

In Circuit Court.

We hereby acknowledge ourselves security for costs of appeal in this cause, returnable to the present term of the Supreme Court of Alabama; also waive all right to claim of exemptions as against this obligation.

FRANK H. PIERCE,
By ROBERT C. REDUS,
His Attorney in Fact.
ROBERT C. REDUS,
J. R. CARTER.

Approved February 21, 1894.
FERGUS W. MCCARTHY, Clerk.
Filed February 21, 1894.
FERGUS W. MCCARTHY, Clerk.

CITATION.

THE STATE OF ALABAMA, Jefferson County. } Circuit Court.

To Tennessee Coal, Iron & Railroad Company, or R. H. Pearson, Walker Percy, Attorneys—Greeting:

Whereas Frank H. Pierce has taken an appeal from the judgment by the Circuit Court for the county of Jefferson, State of Alabama, in the cause of Frank H. Pierce against Tennessee Coal, Iron & Railroad Company;

Now you are therefore cited to appear at the present

term of the Supreme Court of Alabama, to defend on said appeal, if you shall think proper so to do.

Witness the 21st day of February, 1894.

FERGUS W. McCARTHY, Clerk.

We accept service of the within notice and waive copy of same February 21, 1894.

WALKER PERCY,
Attorney for Defendant.

CERTIFICATE OF APPEAL.

THE STATE OF ALABAMA,
Circuit Court of Jefferson County.

I, Fergus W. McCarthy, Clerk of the Circuit Court of Jefferson county, Alabama, do hereby certify that the foregoing pages, from one to seventeen inclusive, contain a full and complete transcript of the record and proceedings of the said Circuit Court in a cause therein pending, wherein Frank H. Pierce is plaintiff, and Tennessee Coal, Iron & Railroad Company is defendant; that the said Frank H. Pierce did on the 21st day of February, 1894, after giving security for costs, obtain an appeal to the present term, 1894, of the Supreme Court of Alabama, and that Robert Redus and J. R. Carter are the sureties for the said costs; all of which I hereby certify to said Supreme Court.

Witness my hand this 21st day of February, 1894.

FERGUS W. McCARTHY, Clerk.

CERTIFICATE.

THE STATE OF ALABAMA,
Circuit Court of Jefferson County.

I, Fergus W. McCarthy, Clerk of the Circuit Court of

Jefferson county, Alabama, do hereby certify that the foregoing pages, from one to ten inclusive, contain a full and complete transcript of the record and proceedings of said Circuit Court in a cause therein pending, wherein Frank H. Pierce is plaintiff, and the Tennessee Coal, Iron & Railroad Company, is defendant.

Witness my hand and seal of office this the 28th day of March, 1896.

FERGUS W. MCCARTHY,
Clerk of the Circuit Court of Jefferson County.

[Endorsed.]
Filed March 28, 1896.
N. W. TRIMBLE, Clerk.

MONDAY MORNING, MARCH 30, 1896.

Frank Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

249.

This cause coming on to be heard on the motion of the plaintiff to remand said cause back to the Circuit Court of Jefferson County, Alabama, and after being argued by counsel pro and con, was submitted to the Court for its consideration.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

249.

This cause having heretofore been argued by counsel

pro and con and submitted to the Court upon motion of the plaintiff to remand the said cause back to the said Circuit Court of Jefferson County, Ala., and now after due consideration thereof by the Court, it is ordered that the said motion be and the same is hereby denied and overruled.

AGREEMENT OF COUNSEL.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

In this case it is agreed that the same may be set down peremptorily for trial on Monday, January 4, 1897, at Huntsville, Ala.

The signatures to the contract sued on are admitted to be genuine.

December 23, 1896.

W. A. GUNTER,
R. C. REDUS,
For Plaintiff.
WALKER PERCY,
For Defendant.

[Endorsed.]
Filed December 27, 1896.
N. W. TRIMBLE, Clerk.

SEPTEMBER TERM, 1896.

Present Hon. Aleck Boarman, Judge of the District

Court of the United States for the Western District of Louisiana, sitting and presiding as Circuit Judge.

THURSDAY MORNING DECEMBER 17th, 1896.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Co.

249.

It is ordered that this cause be set down for hearing for next Tuesday the 22d day of December.

WEDNESDAY MORNING DECEMBER 23d, 1896.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Co.

249.

Come the parties by their attorneys and in open court agree that this cause may be continued for trial at Huntsville, Alabama, before the Hon. Aleck Boarman, presiding Judge, on the first day of the adjourned October term, 1896, of the United States Circuit Court for the Northern Division of the Northern District of Alabama to be held on December 30th, 1896, or any day subsequent thereto on which said cause may be tried to meet the convenience of the Court or the parties interested therein, and that the result of said trial shall become and be the judgment of

this Court the same as if said trial had taken place in the United States Court Room in Birmingham, Alabama.

It is therefore ordered by the Court that this cause be and the same is hereby set down for trial at Huntsville, Alabama, on Wednesday, December 30th, 1896, or on such day thereafter as soon as said cause may be reached for trial, or on such day as may be agreed upon by counsel for both parties, as may meet with the approval and consent of the Court, and that the result of said trial and the judgment thereon shall be entered and recorded in the office of the Clerk at Birmingham, Alabama.

DEFENDANT'S PLEAS.

In the Circuit Court of the United States for Southern Division of the Northern District of Alabama.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

Pleas of Defendant.

1. The defendant for answer to the complaint, says that it denies each and every allegation therein contained.

2. The defendant for further answer to the complaint, says that the plaintiff under and by the terms of the contract set out in the complaint, contracted to perform for the defendant during the term thereof such service as he was able to perform in consideration for the promises made by defendant therein, and the defendant avers that the plaintiff thereafter became able to perform service for the defendant, and did in fact perform such service for some time thereafter; and that while engaged in the performance of

such service, the plaintiff voluntarily and without excuse therefor refused to further perform such service as he was able to perform, and was in fact performing for the defendant, as required by said contract, and the defendant thereupon discharged the plaintiff from its service; and the defendant avers that the plaintiff failed to comply with the conditions imposed upon him by said contract.

3. The defendant for further answer to the complaint, says that the contract upon which this action is founded is not executed by it or any one authorized by it to bind it in the premises, and defendant makes oath that this plea is true.

WALKER PERCY,
W. I. GRUBB,
Attorneys for Defendant.

STATE OF ALABAMA, }
Jefferson County. }

Before me, the undersigned, a Notary Public in and for said county in said State, personally appeared Walker Percy, who being duly sworn, deposes and says that he is attorney of defendant, and authorized for it to make this affidavit, and that the facts stated in Plea No. 3 are true.

WALKER PERCY.

W. I. GRUBB,
Notary Public.

[Endorsed.]
Filed in Clerk's office January 4, 1897.
N. W. TRIMBLE, Clerk.

AMENDMENT TO COMPLAINT.

Plaintiff amended his complaint as follows by inserting in the contract as set out after the words, "After I had

resumed work a further proposition was made to give me work, such as I could do paying me therefor the wages paid me before said accident, that is $60 a month and in addition free house rent," the following words, "or in lieu of house rent, a certain amount of supplies from the convict commissary at No. 2 prison which supplies were to amount to about the sum paid by me for house rent," the words so inserted immediately preceding the words "and whereas said agreement."

[Endorsed.]

Filed January 4, 1897.
N. W. TRIMBLE, Clerk.

DEMURRER TO SECOND PLEA.

In the Circuit Court of the United States at Huntsville.

Frank H. Pierce

vs.

Tennessee Coal & Iron Co.

1. The plaintiff joins issue on the first plea of defendant.

2. As to the second plea defendant demurs thereto and for grounds of demurrer assigns:

1. That said plea does not go to the whole consideration of the contract and is no answer to the entire action.

3. As to the third plea plaintiff takes issue thereon.

W. A. GUNTER
and ROBERT C. REDUS,
For Plaintiff.

[Endorsed.]

Filed in Clerk's Office January 4, 1897.
N. W. TRIMBLE,
Clerk U. S. Circuit Court.

PLEA NO. 4.

In the Circuit Court of the United States.

F. H. Pierce

vs.

T. C., I. R. R. Co.

The defendant for further answer to the complaint, and by way of recoupment, says that the plaintiff under and by the terms of the contract sued on in the complaint, contracted to perform for the defendant during the term thereof such service as he was able to perform in consideration for the promises made by defendant therein, and the defendant avers that the plaintiff thereafter became able to perform service for the defendant, and did in fact perform such service for some time thereafter; and that while engaged in the performance of such service for some time thereafter, to-wit, on May 3d, 1891, the plaintiff voluntarily, and without excuse therefor, refused to perform such service as he was able to perform, and was in fact performing for the defendant, as required by said contract; and has since continued to refuse to perform such service, and has not in fact since such time performed such services, or any part thereof, to the damage of the defendant in the sum of fifty thousand dollars, which defendant offers to recoup against the claim of plaintiff, and asks judgment for the excess.

WALKER PERCY,
W. I. GRUBB,
Attorneys for Defendant.

[Endorsed.]
Filed in Clerk's office January 4, 1897.
N. W. TRIMBLE, Clerk.

MONDAY MORNING JANUARY 4th, 1897.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Co.

249.

This cause coming on to be heard on the demurrers of the defendant to the plaintiff's complaint, and the same being argued by counsel and duly considered by the Court.

It is ordered that the same be overruled and denied and thereupon by leave of the Court the plaintiff in open Court files an amended complaint, as appears from separate paper this day filed.

And said cause coming on further to be heard on the demurrers of the defendant to the amended complaint, and the same being argued by counsel and duly considered by the Court, it is ordered that said demurrers be overruled and denied.

And said cause coming on further to be heard upon the demurrer of the plaintiff to the second plea of the defendant and the same being argued by counsel, it is ordered by the Court that said demurrer be and the same is hereby sustained. Defendant in open Court files plea No. 4.

TUESDAY MORNING, JANUARY 5, 1897.

Frank Pierce

vs.

Tennessee Coal, Iron & Railroad Company.

249.

This day comes the parties, plaintiff and defendant, by

their respective attorneys, and to try the issues joined comes a jury of good and lawful men, to-wit, A. H. Irons and eleven others, who being elected, tried and sworn, well and truly to try the issues joined, upon their oaths do say: "We, the jury, find for the plaintiff, and assesss his damage at $5,893.00. A. H. Irons, Foreman. January 5, 1897."

It is therefore considered by the Court that the plaintiff, Frank Pierce, have and recover of the defendant, the Tennessee Coal, Iron & Railroad Company, the sum of five thousand eight hundred and ninety-three ($5,893) dollars, his damages, and the cost of this proceeding, for which let execution issue.

After the jury was empanelled one of the jurors was taken sick, but the attorneys of both the plaintiff and defendant consented in open court that the remaining eleven jurors should hear and decide the cause, and it is so ordered by the Court.

ORDER OF COURT AS TO BILL OF EXCEPTIONS.

Frank H. Pierce

vs.

The Tennessee Coal, Iron & Railroad Company.

249.

Comes the defendant by his attorney, and moves the Court for a new trial, and by consent of attorneys for both sides, it was agreed that the Court should have sixty days to pass upon and decide this motion, and said decision may be made in chambers with same effect if signed in open Court.

By agreement of counsel for both sides in open court, it is ordered that each side may have sixty days from this

date to file bills of exception, and presiding Judge may sign same in chambers with same effect as if signed in open court.

SATURDAY, FEBRUARY 27, 1897.

By direction of the Hon. Aleck Boarman Judge of the District Court of the Western District of Louisiana.

Frank H. Pierce

vs.

Tennessee Coal, Iron & Railroad Co.

249.

This cause having heretofore been submitted upon the motion of the defendant for a new trial, it is now upon due consideration of the Court ordered that the said motion be and the same is hereby denied and overruled.

MOTION FOR NEW TRIAL.

Frank H. Pierce

vs.

Tennessee Coal, Iron & R. R. Co.

Comes defendant in this cause and moves that the verdict of the jury in this cause be set aside and a new trial granted.

1. On the ground that the verdict is contrary to the evidence, and is excessive.

2. On the ground that the Court erred in the law.

WALKER PERCY,
Attorney for Defendant.

[Endorsed.]
Filed in Clerk's Office, January 5th, 1897.
N. W. TRIMBLE, Clerk U. S. Circuit Court.

BILL OF EXCEPTIONS OF DEFENDANT.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Frank Pierce

vs.

Tennessee Coal, Iron & Railroad Co.

Be it remembered that on the 5th day of January, 1897, the following proceedings were had in the Circuit Court of the United States in and for the Southern Division of the Northern District of the State of Alabama, before the Hon. Alex Boarman, District Judge, and a jury, viz:

The plaintiff introduced in evidence the contract sued on in this case, the signatures were admitted by counsel for both parties in open Court to be genuine, and which is as follows:

Tennessee Coal, Iron & Railroad Company.—Pratt Mines Division.

G. B. McCormack, Superintendent.

Pratt Mines, Ala., 4th June, 1890.

"Whereas I, F. H. Pierce, while in the employ of the Tennessee Coal, Iron & Railroad Company, Pratt Mines Division, as a machinist was seriously hurt by a trip of

tram cars on the main slope of the mine known as Slope No. 2, and operated by the Tennessee Coal, Iron & Railroad Company, under circumstances which I claim render the said company liable to me for damages, but whereas, they disclaim any liability for said accident or the injuries to me resulting from same, and both parties being desirous of settling and compromising said matter; and, whereas, the said Tennessee Coal, Iron & Railroad Company, did make me a proposition on the —— day of November, 1888, said accident having occurred on the 21st day of May, 1888, that they would furnish me such supplies from the commissary at No. 2 prison, as I might choose to take, pay me regular wages while I was disabled, and give me my coal and wood for fuel at my dwelling and the benefit of the convict garden at No. 2; and, whereas, said proposition was accepted by me and carried out by the said Company; and, whereas in May, 1889, after I had resumed work, a further proposition was made to me to give me work, such as I could do, paying me therefor the wages paid me before said accident, that is $60 a month, and in addition free house rent, or in lieu of house rent a certain amount of supplies from the convict commissary at No. 2 prison, which supplies were to amount to about the sum paid by me for house rent; and, whereas, said agreement has been faithfully kept by both parties; and whereas, on the 4th day of June, 1890, it is mutually agreed between myself and the said company that it will be better to give me the house rent than the supplies of about equal amount from the commissary; now, therefore, it is agreed that in view of the above propositions which have been faithfully carried out that my wages from this date are to be $65 a month, and in addition I am to have free of charge my coal and wood necessary for my household use at my dwelling, and the same benefit from the garden, as is had by others who are allowed the garden privilege, and I on my part agree and bind myself to release the said company from any and all liability for said accident or from the injuries resulting to

me from it or from the effects of it, and agree that this is to be a full and satisfactory settlement of any and all claims which I might have against said company.

(Signed) F. H. PIERCE,
G. B. MCCORMACK.

Witness –
P. J. Rogers,
Erskine Ramsey.

The defendant objected to the introduction of said contract, because it appeared on its face to have been executed not by the defendant, the Tennessee Coal, Iron & Railroad Company, but by G. B. McCormack as an individual; and thereupon this Court overruled the objection, and the defendant excepted.

Frank Pierce, plaintiff, was introduced as a witness, and testified as follows:

I am the plaintiff in this case, and know G. B. McCormack. He was superintendent of defendant on June 4th, 1890, and managed the business of the Pratt Mines Division as business manager. I was discharged by Mr. McCormack. I sent the letter shown in evidence set out in this bill of exceptions, marked Exhibit "A," to G. B. McCormack, and got the letter set out in this bill of exceptions, marked Exhibit "B," from him in reply. Mr. McCormack made the first contract with me. I was injured in May, 1888. Mr. McCormack made the first agreement with me in November, 1888. After I had resumed work, another proposition was made to give me such work as I could do, and pay me sixty-five dollars a month, in addition to other things, by Mr. McCormack. I was discharged on May 4th, and before my discharge I was paid from May, 1888, to April, 1891, as the contract called for; I was paid under contract, and had all the contract calls for until I was discharged. Mr. McCormack was boss in the office at Pratt Mines for the defendant. Colonel Ball, the predecessor of Mr. McCormack, as superintendent, hired me.

Will Rogers, who was an officer of defendant, paid me. I had the use of the garden and other things provided for in the contract.

The plaintiff then offered the contract sued on in evidence.

The defendant objected to the introduction of the contract, because the authority of G. B. McCormack to execute it for defendant was not sufficiently shown, and for the reasons already given as above set out. The Court overruled the objection, and defendant excepted, and thereupon the contract was introduced in evidence.

The plaintiff testified further as follows:

After the receipt of the letter from Mr. McCormack (shown as Exhibit "A" hereto); the defendant never asked me to perform work for them, nor did I ever refuse to perform work for them. I worked for the defendant up to the 4th day of May, and was paid up to the first day of April—they owe me for that month—and have never been called on to do any work for defendant since the discharge, and had no payment from them since then. I worked for them as a machinist, and was injured while in the defendant's employ at Slope No. 2.

The counsel for plaintiff then propounded this question to him— The defendant objected to the question, because the contract on which the suit was brought was one from month to month, and the extent and period of disability was immaterial. The Court overruled the objection, and the defendant excepted. The question was: "State what were the extent of your injuries so received." The witness answered the question as follows: "My left hand was crushed, and the little finger cut off. I can only bend my left hand partially now at the fingers (the witness exhibited his hand. It was a good hand before I was hurt. My leg was broken at the ankle, and a piece of bone 2½ inches long taken out. and that made one leg shorter than

the other, as it is still. My injured leg is 2½ inches shorter than the good one, and pains me now when I stand on it for any length of time down in my ankle. I can only partially bend my foot." (And the plaintiff exhibited his injured hand, showing that he could not more than half close it, and could not grasp anything or freely use the fingers, and that they were weak.)

The plaintiff testified further, as follows:

Mr. McCormack was familiar with the extent of my disability when he made the contract sued on with me. When I made the contract I was not going on crutches. I had got better then. The first time Mr. McCormack saw me after I got hurt was in November, 1888. He then made me a proposition as to what he would do, and gave me fifty dollars, and I went to Nashville and got my leg fixed. Dr. Cunningham, defendant's physician, treated me.

On cross-examination he testified as follows:

I now live at Cowles' Station, and have bought 80 acres of land and am living on it. The only work I have ever done on it, is to put out some fertilizer, and superintend the work on the farm. I ran the compressor at the mines of defendant for over a year after I got well, after I was hurt. I did not take care of the machinery. Another man oiled the engine and I just sat there, and didn't do any work, except to shut the steam off the engine or give her more steam.

I regulated the amount of steam and turned it on and off. Towards the last I oiled the engine. I could do that with one hand. I can't run a stationary engine, because I cannot stay on my feet for any length of time. I couldn't fire the engine, and generally the stationary engineer does that. I couldn't run the engine if somebody fired for me. I couldn't run a locomotive. The way I quit working for the defendant was this: I was working on the day shift and Dunn, a convict, ran the compressor on the night

shift. I went to the warden one Sunday morning and told him I couldn't work with Dunn. Dunn and I had fallen out, and Dunn had been off for two weeks, and I heard on Sunday morning Mr. Rogers was going to put him back. I told Mr. Rogers I couldn't work with him. He said, I don't see why you can't. I said I will work with any body else, but I can't work with Dunn. And the next Monday morning I went to Mr. Rogers and said: "I am ready to go to work any where you put me." He said: "You won't work with Dunn." And I said, "I can't work with Dunn." He went off and made some remark I didn't understand, and then he brought me that discharge and I wouldn't accept it. Dunn came out to the compressor at 4 o'clock every evening and oiled it and took charge of it until morning. He was on night shift and I was on day shift. After he oiled it up at 4 o'clock I would start it up and stay until 5 or 6 in the evening and then go home, and he would stay with it all night until 7 next morning. We didn't work together but on different shifts. After the conversation I had with Mr. Rogers Sunday morning, I went to the compressor and stayed all day with it. After the conversation I had with Rogers Monday morning I went back home and told Mr. Rogers I would be there if he wanted me, and then either in the forenoon or afternoon he gave me my discharge and I gave it back. I don't know who ran the compressor after Monday. I never ran it any more. The first agreement made between Mr. McCormack and myself in November, 1888, was a verbal agreement. The agreement made between me and Mr. McCormack in May, 1889, was also a verbal agreement.

The defendant's counsel then asked plaintiff this question: "State the conversation and agreement made and had between you and Mr. McCormack with reference to what the company would do for you when the first agreement was made in November 1888." The plaintiff objected to the question because this agreement was contained or merged in the original agreement, which was in writing.

The court sustained the objection, and the defendant excepted.

The defendant's counsel also asked the plaintiff this question: "State what the agreement between you and Mr. McCormack was which was made in May, 1889." The plaintiff objected to this question on the same grounds. The Court sustained the objections and defendant excepted.

Counsel for defendant stated that he proposed to show the terms of each agreement, and that no release of plaintiff's cause of action for his injury was exacted from him by the terms of either agreement.

On re-direct examination, counsel for plaintiff asked this question: "Who wrote and prepared the written contract sued on in this case?" The defendant objected to this question because it called for immaterial evidence. The Court overruled the objection and the defendant excepted. The witness answered the question as follows: "Mr. McCormack wrote it himself."

The plaintiff testified further, as follows:

I signed the contract, and Mr. Rogers and Ramsey witnessed it, the day Mr. McCormack wrote it out, but Mr. McCormack did not sign it for some time afterwards; I could not say how long—it might have been a month or two months after. I had the contract in my pocket during this time, which was my copy; Mr. McCormack retained his duplicate. I called Mr. McCormack's attention to the fact that he had not signed the contract, and thereupon he did sign my copy. I did not go back to work until six or eight months after I got hurt. The work I did with the compressor I could do with one hand and sitting down. Dunn was a convict, and got liquor at nights sometimes. He was a tall, stout man.

The counsel for plaintiff then asked plaintiff this question: "What was Dunn's character for peace and quiet?"

The defendant objected to the question, because it called for immaterial evidence; the Court overruled the objection, and defendant excepted. The witness answered the question as follows: "When he was in liquor he was bad, and when he didn't have liquor he was all right."

The counsel for plaintiff then asked plaintiff this question: "Did Dunn make any threats in talking to you." Defendant objected to the question, because it called for immaterial evidence; the Court overruled the objection, and defendant excepted.

The witness answered the question as follows: "He told me to get out once and started toward me. I had picked up a lantern and asked him how it got there, and he said it is none of your damn business; you get out of here and keep out, or I'll kick you out; and he started to me, and I went out, and ain't been back since."

The plaintiff testified further, as follows:

I don't know whether defendant knew whether Dunn was unruly or difficult to get along with or not, or whether he got drunk. He was not frequently drunk.

Plaintiff's counsel then asked plaintiff this question: "Did you refuse to work with him on account of your personal danger?" Defendant objected to the question, for the same reasons above given, and because it was not shown that he communicated such reason to defendant; the the Court overruled the objection, and defendant excepted. The witness answered the question: "Yes, sir."

The witness testified further, as follows:

The mine where I ran the compressor was a convict mine. All the miners were convicts, and some of the foremen were convicts; they were trusties. Dunn was a trusty himself. Another convict worked at the compressor when Dunn was off. I had no objection to the other convict.

On re-cross examination, he testified as follows:

I never told the officers of the defendant anything

about how Dunn had treated me or reported him to any one; I didn't tell Mr. Rogers why I couldn't work with Dunn when he asked me at the time I was discharged. The threats were made two weeks before I quit, but Dunn didn't come out any more before I quit. I worked two weeks after the threats were made. There were men working near the compressor. There were guards close to the compressor at the mouth of the slope. It was necessary to have a man always at the compressor, and that was the duty assigned me to do by Mr. Rogers.

The plaintiff then introduced the following letter above referred to, written by him to said G. B. McCormack— The defendant objected to the introduction of said letter, because it was immaterial and irrelevant and incompetent; the Court overruled the objection and permitted the letter to be read to the jury, and the defendant excepted.

The letter is in words and figures as follows:

EXHIBIT "A."

Birmingham, Ala., May 8, 1891.

G. B. McCormack, Esq., Pratt Mines, Ala:

Dear Sir: On last Monday, the 4th inst., Mr. W. L. Rogers handed me an order on the paymaster of the Tennessee Coal, Iron & Railroad Company for two day's pay and stated in said order that I had voluntarily quit work. The terms of this order show that it is a discharge from the employment of said company, and a violation of the contract existing between said company and myself. I therefore returned the order to Mr. Rogers, and refused to receive it. I have always been and am still ready to comply with my part of the contract, and stand ready to-day or at any time to carry out its provisions. I respectfully address you this communication to inquire whether this order and virtual discharge was delivered to me by your direction, and ask you to reply at your earliest convenience. If

the Tennessee Coal, Iron & Railroad Company have ordered my discharge, it is but just that I should be informed of the fact. Please address me at Birmingham, care of F. S. Ferguson. Very respectfully,

(Signed) F. H. PIERCE.

The plaintiff also introduced in evidence a letter as above referred from G. B. McCormack to plaintiff in reply to the above. The defendant objected to the introduction of said letter because it was immaterial; the Court overruled the objection, and defendant excepted.

The letter is as follows:

EXHIBIT "B."

Pratt Mines, May 12, 1891.

F. H. Pierce, Pratt Mines, Ala.

Dear Sir: Replying to your letter of May 8, 1891, we have to say that since you have seen fit to quit work for the company of your own accord, the company declines to employ you further in its services. Yours truly,

TENNESSEE COAL, IRON & R. R. CO.,
By G. B. MCCORMACK, Ass't G. M.
Care of F. S. FERGUSON, Attorney.

It was admitted that the supplies to be furnished the plaintiff under the contract were worth at least five dollars per month.

The plaintiff here closed his case.

The defendant thereupon introduced the testimony of Dr. R. M. Cunningham, as follows:

I have been practicing medicine for 22 years, and am a graduate of a medical college. I have been convict physician at Pratt Mines for many years. I know the plaintiff, and treated him when he was hurt in 1888. He

had a compound fracture of the right leg. I removed a couple of inches of the main bone that was detached, and dressed it according to the rules of antiseptic surgery, and put it in plaster of paris. His little finger on the left hand was torn off. I also took a fractured bone out of his hand, and dressed the wound in his hand, and reduced a dislocated ankle. The wound in his leg healed but failed to make a bony union. He then went, at my suggestion, to Dr. Briggs at Nashville, who operated on it. After he returned there was a perfect union in the bone. I have examined him recently. One of his legs is now 2 or 2½ inches shorter than the other, and he has a slight stiffness of the ankle, and the to and fro motion of his hand is limited, causing difficulty in flexing his fingers, and his little finger is gone. His power of flexing his fingers is reduced one half. I have observed stationary and locomotive engines being operated almost daily when I am at home, and ride on locomotives frequently at Pratt Mines. I think the plaintiff can run a stationary or locomotive engine in his present condition. I do not think that the plaintiff's leg gives him any pain now, even when he stands on it, but his ankle might hurt him a little. I do not think he could do the best work as a machinist, but there is work that he can do, requiring one hand, in addition to running a stationary or locomotive engine. I think he could do any kind of work that does not require of him to shut his left hand too tightly, and that does not require of him too much walking. When he came back from Nashville his wounds had recovered as much as they have now, with the exception of the hardening of the scars. His general condition was more debilitated, but he soon recovered from that. My recollection is that he came back from Nashville early in 1889.

On cross-examination, he testified as follows:

I am employed by the defendant on a salary, and have been since 1885. I made an examination of the plaintiff

recently at Mr. Tillman's office, where I went to leave my convict bill, and found you and plaintiff there by pure accident. You asked me to make the examination yourself. I told the defendant's attorney that I had made the examination. At the time plaintiff was first hurt I wanted to cut off his leg, and he objected, and I saved it.

The plaintiff's counsel asked the witness this question: "Didn't you tell the plaintiff he would be in hell in ten days if he didn't allow you to cut off his leg?" The defendant objected to the question, because it called for immaterial and hearsay testimony; the Court overruled the objection, and the defendant excepted. The witness answered the question as follows: "I think I told him he would be in hell in 48 hours."

The witness testified further, as follows:

He said he would go with both legs. I never ran an engine. The engineer sits on the seat and handles the lever on the right hand, throws it forward and backwards, holds the throttle, turns the little valve to let the water go in the boiler, sands the track, and so forth. I have seen engineers use both hands to throw the lever, and the plaintiff could use both. He would not have to grasp it with his left hand. The plaintiff has still his muscular force in his arm and forearm, but can't grasp with his left hand. (The witness here examined plaintiff's hand.) I find he can flex his fingers more than I thought he could. His power to flex his fingers is proof positive that his leaders are intact, though not as strong as they were. I can't tell whether he contracted his fingers his best or not The plaintiff was dangerously hurt and dangerously sick after he was hurt for two days. He was feeble in health for eight or ten months after.

W. L. Rogers testified on behalf of the defendant as follows:

I know the plaintiff, and was warden of the prison at

the time he was hurt. They were convicts there, and I had charge of them. I am now defendant's superintendent at Blue Creek. I remember when the plaintiff went to work after he was hurt. When he quit working after he was hurt, he came to me on Sunday morning and asked me if I had put Dunn back at the compressor, and I told him I had; he then said he wouldn't work. I asked him what was the matter with him and Dunn. He said: "Well, if you put him back there I will not work." That is about all he said and about all I said. He didn't say anything about what was the matter, and he turned and walked out in the yard. That conversation took place in the morning in the hall of the prison. It was his time to go to work, and he had on his working clothes. He did not go back to the compressor that day. He said he wouldn't work, and went back home, and I put a man in his place immediately. My recollection is that he was then absent for two or three days, and then he came back Tuesday or Wednesday morning and reported for work. I told him I had put a man in his place, because he had told me Sunday that he had quit and wouldn't work any more, and I had put a man in his place. I also gave him the letter from Mr. Polk, which is hereafter set out in the bill of exceptions as Exhibit "C." The plaintiff ran the compressor every day and Dunn ran it at night, and they didn't come in contact with each other except when they changed shifts. The plaintiff had charge of the compressor. He ran it, greased and looked after it just as any other man would do. Sixty or sixty-five dollars would be a reasonable value for the work he did in running the compressor. He ran it and kept it up for a year or a year and a half just as well as any one else would do. Fifteen or twenty men worked around close to the compressor and right in sight of where plaintiff and Dunn worked. Plaintiff was absent from work from Sunday morning until Tuesday or Wednesday morning with my consent.

On cross-examination, he testified as follows:

I think I put a convict in plaintiff's place, and had a machinist to superintend both shifts. Some of the convicts have a great deal of experience with machinery. Plaintiff did not fire the engine, but oiled it, and put springs and such things as that in it. I saw him frequently at work there after he was hurt. I am familiar with stationary engines, and I think plaintiff could run one all right after he was hurt. He did run it for a year. It requires mechanical skill and experience to grease and attend to an engine.

Dunn was a very good convict; he got a reduction of his term on account of good behavior. He was not a dangerous man, and was above the average—he was a trusty, but there was a guard out there all night.

G. B. McCormack testified for defendant as follows:

I am general manager of defendant, and was its assistant general manager when plaintiff was hurt.

Defendant then asked witness this question: "In November, 1888, when you first agreed to pay plaintiff wages while he was disabled, state whether or not he made any agreement to release his cause of action for injury received against the company?" The plaintiff objected to the question because the contract was embodied in the written contract sued on. The Court sustained the objection and defendant excepted.

Defendant asked the witness this question: "Do you remember plaintiff being paid a lump sum of several hundred dollars before he started to work, after he was hurt. If so state the circumstances as well as you can?" The plaintiff objected to the question because it was immaterial. The Court sustained the objection and defendant excepted.

The witness testified further as follows:

I didn't examine plaintiff to see the extent of his in-

juries at the time the contract sued on was made or before that time. I noticed that his hand was injured, but not in what particular way, I simply knew he was injured in one hand and one leg, but did not know to what extent. I wrote the agreement sued on. The plaintiff told me his understanding of the matter and I wrote it down as he told me.

On cross-examination he testified as follows:

I put the contract in form. He (plaintiff) didn't dictate the last clause; he simply agreed to it. I am still in defendant's service, and have been promoted.

The defendant then introduced in evidence the following letter identified by the witness Rogers, as having been handed plaintiff:

EXHIBIT "C."

Pratt Mines, May 4th, 1891.

Mr. N. N. Polk, Cashier T. C. I. & R. R. Co:

Dear Sir: As Mr. Frank Pierce has discontinued work at Slope No. 2 on his own accord, you will please settle with him for two days in this month and oblige. Yours, etc.,

W. L. ROGERS,
Warden No. 2.

The defendant then rested.

The plaintiff offered the testimony of a witness, who it was admitted was an expert, and had calculated the amount, with interest, of the installments of wages past due on the contract up to the time of the trial, and who stated the objection and exception of defendant on the

ground that it was a matter for the jury, not for the witness, that the amount with interest up to date to the time of the trial according to his calculation, which he believed to be correct, was $5,893.00. The foregoing was all the evidence in the case.

At the conclusion of the evidence the Court stated that it would limit the recovery to the installments of pay due at the commencement of the suit, but after argument said that plaintiff should be entitled to installments due up to the trial, and asked the defendant's attorney if that was his view of the law, viz: That if the plaintiff was otherwise entitled whether he should recover for amounts due to the trial, to which defendant's attorney told the Court that such was the law, and thereupon the Court said it would so rule, and asked plaintiff's attorney to prepare such a charge for the jury, whereupon plaintiff's attorney prepared and handed to the Court this written charge, which the Court thereupon gave to the jury as follows: Under the evidence in this case, I charge you that the plaintiff is entitled to recover in this action, and the measure of his damages is the aggregate amount of all the installments of seventy dollars for each month in default and unpaid, from the time of the commencement of the employment under the contract sued on until the time of the trial, with interest on each installment from the time it fell due up to the time of the trial, which amounts, under the evidence, to the sum of $5,893.00.

The defendant then and there, in the presence of the jury and before the jury retired, duly excepted to the giving of said written charge so requested in writing by the plaintiff, and given by the Court.

The Court gave no other charge to the jury than the written charge above set out, either oral or written.

The defendant requested the Court in writing to give to the jury separately and severally each of the following written charges—

The Court thereupon refused separately and severally to give to the jury any one of the written charges so requested by the defendant, and indorsed his refusal in writing on each charge; and the defendant then and there, in the presence of the jury and before the jury had retired, separately and severally excepted to the refusal of the Court to give each of said written charges so requested by the defendant in writing.

The following are the written charges so requested and refused:

1. If the jury believe the evidence in this case, they must find a verdict for the defendant.

2. If the jury believe the evidence in this case, they must find that plaintiff left defendant's service wrongfully and without legal excuse.

3. If the jury believe from the evidence that the plaintiff left the service of defendant wrongfully or without legal excuse, then the jury must find for the defendant.

4. If the jury believe from the evidence in this case that in May, 1889, when the second agreement between the plaintiff and defendant was made, the plaintiff was not disabled by his injury from performing labor and work, the jury must find for the defendant.

5. If the jury believe from the evidence that the plaintiff was not disabled by reason of his injuries from doing such work as running an engine at and after the time he resumed work for defendant after he received injuries, then the jury must find for the defendant.

6. If the jury believe from the evidence that the plaintiff wrongfully left the service of the defendant, then the jury must find for defendant under its plea of recoupment, and assess such damages as jury may believe from the evidence the defendant may have sustained from the loss of plaintiff's services during the term of the contract.

7. The value of the benefit which the jury may believe from the evidence the defendant would have derived from the continued performance of the work, which plaintiff was required to do by the terms of the contract during the term of the contract, is to be deducted from the amount, the jury may believe from the evidence the plaintiff would have earned under the contract during its term, had it not been terminated, when the jury come to assess the damages.

8. If the jury believe from the evidence in this case that Pierce, at the time he was discharged by defendant, was no longer disabled within the contemplation of the contract sued upon, then the jury must find a verdict for the defendant.

9. The Court charges the jury that under the evidence in this case Pierce gave Rogers no good and sufficient reason for discontinuing work at the compressor at the time he discontinued such work.

10. If the jury believe from the evidence in this case that Pierce capriciously and without good reason refused to continue at the work which he was assigned by the defendant at its compressor, then the Court charges the jury that defendant was guilty of no wrong in discharging plaintiff from his service.

11. The Court charges the jury that under the evidence in this case if they believe that Pierce was unwilling to work on the compressor on alternate shifts with Dunn on account of apprehension of bodily harm from Dunn, that it was his duty to have stated such fact or belief to defendant, its officer or agents.

Defendant tenders this, its bill of exceptions, and prays that the same may be signed, sealed and made part of the record by the presiding judge which is accordingly done

within the time prescribed by a written agreement and an order of Court on this 20th day of February, 1897.

(Signed) ALECK BOARMAN, Judge.

We consent to the above bill of exceptions.

W. A. GUNTER,
and R. C. REDUS,
For Plaintiff.

[Endorsed.]
Filed February 23d, 1897.
N. W. TRIMBLE, Clerk.

PETITION FOR WRIT OF ERROR AND ASSIGNMENT OF ERROR.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Tennessee Coal, Iron & Railroad Company, Plaintiff in Error,

vs.

Frank H. Pierce, Defendant in Error.

To the Hon. Don A. Pardee, Judge of the Circuit Court of the United States for the Fifth Circuit:

The petition of the Tennessee Coal, Iron & Railroad Company respectfully shows unto your honor that in the record and proceedings of the Circuit Court of the United States for the Northern District of Alabama, Southern Division, there hath intervened in a certain cause therein pending, wherein your petitioner is defendant, and the said defendant in error is plaintiff, manifest error to its injury, as is particularly shown in the assignment of errors, which is hereto attached as a part of this petition.

And petitioner prays your honor will direct that a writ of error be issued to the said Circuit Court of the United States for the Northern District of Alabama, Southern Division, that the record and proceedings in said cause may be returned into the United States Circuit Court of Appeals for the Fifth Circuit, and that the rulings and judgment of said Circuit Court may be held to be error, and the said judgment be reversed, and said cause remanded to said Circuit Court for further proceedings.

And your petitioner will ever pray, etc.

WALKER PERCY,
and W. I. GRUBB,
Attorneys for Plaintiff in Error.

ASSIGNMENTS OF ERROR OF DEFENDANT.

Tennessee Coal, Iron & Railroad Co., Plaintiff in Error,

vs.

Frank H. Pierce, Defendant in Error.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Now comes the plaintiff in error by its attorneys and says and alleges that in the record and proceedings of the Circuit Court of the United States for the Southern Division of the Northern District of Alabama, in a certain cause between the defendant in error, Frank H. Pierce, and the plaintiff in error, said Tennessee Coal, Iron & Railroad Company, there has intervened to its prejudice manifest error; and it assigns error as follows, to-wit:

1. The said Court erred in sustaining plaintiff's demurrer to the second plea of defendant.

1½. The Court erred in overruling the defendant's demurrer to plaintiff's complaint as amended.

2. The said Court erred in overruling the defendant's objection to the introduction of the written contract sued on in this case in evidence.

3. The Court erred in overruling the objection of defendant to the following question: "State what were the extent of your injuries so received," propounded by plaintiff's counsel to the plaintiff himself. The answer to the question was: "My left hand was crushed, and the little finger cut off. I can only bend my left hand now partially at the fingers. It was a good hand before I was hurt. My leg was broken at the ankle, and a piece of bone two and one-half inches long taken out, and that made one leg shorter than the other, as it still is. My injured leg pains me now when I stand on it any length of time down in the ankle. I can only partially bend my foot."

4. The Court erred in sustaining plaintiff's objection to the following question propounded to plaintiff by defendant's counsel, viz: "State the conversation and agreement made and had between you and Mr. McCormack with reference to what the company would do for you when the first agreement was made in November, 1888."

5. The Court erred in sustaining plaintiff's objection to the following question propounded to plaintiff by defendant's counsel, viz: "State what the agreement between you and Mr. McCormack was which was made in May, 1889."

6. The Court erred in overruling defendant's objection to the following question propounded by counsel for plaintiff to plaintiff himself, viz: "Who wrote and prepared the written contract sued on in this case?" The answer to the question was: "Mr. McCormack wrote it himself."

7. The Court erred in overruling defendant's objec-

tion to the following question, propounded by plaintiff's counsel to plaintiff himself, viz: "What was Dunn's character for peace and quiet?" The answer to the question was: "When he was in liquor he was bad, and when he didn't have liquor he was all right."

8. The Court erred in overruling defendant's objection to the following question propounded to the plaintiff by his counsel, viz: "Did Dunn make any threats in talking to you?" The answer was: "He told me to get out at once and started towards me. I had picked up a lantern and asked him how it had got there, and he said: "It is none of your damn business; you get out of here and keep out, or I'll kick you out," and he started toward me, and I went out and ain't been back since."

9. The Court erred in overruling the defendant's objection to the following question propounded to plaintiff by his counsel, viz: "Did you refuse to work with him on account of your personal danger." The answer was: "I did."

10. The Court erred in overruling defendant's objection to the introduction of the letter from plaintiff to the witness, G. B. McCormack, dated May 8, 1891.

11. The Court erred in overruling defendant's objection to the introduction of the letter from the defendant to the plaintiff, dated May 12, 1891.

12. The Court erred in overruling defendant's objection to the following question asked by plaintiff's counsel of witness Cunningham, viz: "Didn't you tell plaintiff he would be in hell in ten days if he didn't allow you to cut off his leg?" The answer was: "I think I told him he would be in hell in forty-eight hours."

13. The Court erred in sustaining plaintiff's objection to the following question asked by defendant's counsel of witness McCormack, viz: "In November, 1888, when you

first agreed to pay plaintiff wages while he was disabled, state whether or not he made any agreement to release his cause of action for injury received against the company."

14. The Court erred in sustaining plaintiff's objection to the following question asked by defendant's counsel of witness McCormack, viz: "Do you remember plaintiff being paid a lump sum of several hundred dollars before he started to work, after he was hurt; if so, state the circumstances as well as you can?"

15. The Court erred in overruling defendant's objection to the testimony of the expert witness to the effect that the amount due under the contract sued on with interest to the time of the trial was $5,893.00.

16. The Court erred in giving to the jury at plaintiff's request the following written charge: "Under the evidence in this case, I charge you that the plaintiff is entitled to recover in this action, and the measure of his damages is the aggregate amount of all the installments of seventy dollars for each month in default and unpaid from the time of the commencement of the employment under the contract sued on until the time of the trial, with interest on each installment from the time it fell due up to the time of the trial, which amounts under the evidence to the sum of $5,893.00.

17. The Court erred in refusing to give to the jury at the request of the defendant the following written charge, No. 1: "If the jury believe the evidence in this case, they must find a verdict for the defendant.

18. The Court erred in refusing to give to the jury at defendant's request the second written charge, viz: "If the jury believe the evidence in this case, they must find that the plaintiff left defendant's service wrongfully and without legal excuse."

19. The Court erred in refusing to give to the jury at defendant's request the third charge in writing, viz: "If

the jury believe from the evidence that the plaintiff left the service of the defendant wrongfully or without legal excuse, then the jury must find for the defendant."

20. The Court erred in refusing to give to the jury at defendant's request the fourth written charge, viz: "If the jury believe from the evidence in this case that in May, 1889, when the second agreement between the plaintiff and defendant was made, the plaintiff was not disabled by his injury from performing work and labor, the jury must find for the defendant.

21. The Court erred in refusing to give to the jury the fifth written charge requested by defendant, as follows: "If the jury believe from the evidence that the plaintiff was not disabled by reason of his injuries from doing such work as running an engine at and after the time he resumed work for defendant after he received his injuries, then the jury must find for the defendant.

22. The Court erred in refusing to give to the jury at defendant's request the sixth written charge, viz: "If the jury believe from the evidence that the plaintiff wrongfully left the service of the defendant, then the jury must find for the defendant under its plea of recoupment and assess such damages as the jury may believe from the evidence the defendant may have sustained from the loss of plaintiff's services during the term of the contract."

23. The Court erred in refusing to give at defendant's request, the seventh written charge, viz: "The value of the benefit which the jury may believe from the evidence, the defendant would have derived from the continued performance of the work, which plaintiff was required to do by the terms of the contract, during the term of the contract, is to be deducted from the amount, the jury may believe from the evidence the plaintiff would have earned under the contract during its term, had it not been terminated, when the jury come to assess the damages.

24. The Court erred in refusing to give to the jury at defendant's request, the eighth written charge, viz: "If the jury believe from the evidence in this case that Pierce, at the time he was discharged by defendant, was no longer disabled within the contemplation of the contract sued upon, then the jury must find a verdict for the defendant."

25. The Court erred in refusing to give the jury, at defendant's request the ninth written charge, viz: "The Court charges the jury that under the evidence in this case Pierce gave Rogers no good and sufficient reason for discontinuing work at the compressor at the time he discontinued such work."

26. The Court erred in refusing to give to the jury, at defendant's request, the tenth written charge, viz: "If the jury believe from the evidence in this case that Pierce capriciously and without good reason refused to continue at the work he was assigned by defendant at its compressor, then the Court charges the jury that defendant was guilty of no wrong in discharging the plaintiff from its service.

27. The Court erred in refusing to give to the jury at defendant's request the eleventh written charge, viz: "The Court charges the jury that under the evidence in this case, if they believe that Pierce was unwilling to work on the compressor on alternate shifts with Dunn on account of apprehension of bodily harm from Dunn, that it was his duty to have stated such fact or belief to defendant, its officer or agents.

WALKER PERCY,
Attorney for Plaintiff in Error.

[Endorsed.]
Filed in Clerk's Office this March 9, 1897.
N. W. TRIMBLE, Clerk.

MARCH TERM, 1897.

TUESDAY MORNING, MARCH 9, 1897.

Court met pursuant to adjournment. Present and presiding the Hon. John Bruce, Judge of the District Court of the United States for the Middle and Northern District of Alabama, Emmet O'Neal, United States Attorney, Clerk and Marshal.

Tennessee Coal, Iron & Railroad Co., Plaintiff in Error,

vs.

Frank H. Pierce, Defendant in Error.

Upon reading the petition of the Tennessee Coal, Iron & Railroad Company, plaintiff in error, it is ordered that the writ of error, returnable into the United States Circuit Court of Appeals for the Fifth Circuit, be allowed as prayed for, the same to be returnable in the said Court within thirty days from this date, on the plaintiff giving bond in the sum of twelve thousand dollars, conditioned and payable according to law, to be approved by the Clerk of the Circuit Court at Birmingham, let supersedeas issue.

This 9th day of March, 1897.

(Signed) ALEX BOARMAN,
Judge.

WRIT OF ERROR.

UNITED STATES OF AMERICA, ss.

The President of the United States—

To the Honorable the Judge of the Circuit Court of the

United States for the Southern Division of the Northern District of Alabama—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between the said Frank H. Pierce, as plaintiff, and the said Tennessee Coal and Iron and Railroad Company, as defendant, a manifest error hath happened, to the great damage of the said Tennessee Coal, Iron and Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, together with this writ, so that you have the same at New Orleans, La., within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the [SEAL] United States, the ninth day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

N. W. TRIMBLE,

Clerk of the Circuit Court of the United States Southern Division of the Northern District of Alabama.

Allowed by—

ALECK BOARMAN,

Judge.

CITATION.

UNITED STATES OF AMERICA, ss:

The President of the United States:

To Frank H. Pierce—

Greeting: You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fifth Judicial Circuit, to be holden at New Orleans, La., within thirty days from the date hereof pursuant to a writ of error, filed in Clerk's Office at the Circuit Court of the United States for the Southern Division of the Northern District of Alabama, wherein the Tennessee Coal, Iron & Railroad Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United [SEAL.] States, this 9th day of March, in the year of our Lord, one thousand eight hundred and ninety seven.

ALECK BOARMAN, Judge.

On this 9th day of March in the year of our Lord, one thousand eight hundred and ninety-seven, personally appeared William I. Grubb before me, the subscriber, N. W. Trimble, Clerk of the Circuit Court of the United States for the Southern Division of the Northern District of the State of Alabama, and makes oath that he delivered a true copy of the within citation to Robert C. Redus, one of the attorneys for the defendant in error.

Sworn to and subscribed the 9th day of March A. D., 1897.

WM. I. GRUBB.
N. W. TRIMBLE, Clerk.

[Endorsed.]
Filed in Clerk's Office this 9th March, 1897.
N. W. TRIMBLE, Clerk.

ORDER ALLOWING WRIT OF ERROR.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Tennessee Coal, Iron & Railroad Co., Plaintiff in Frror.

vs.

Frank H. Pierce, Defendant in Error.

Upon reading the petition of the Tennessee Coal, Iron & Railroad Company, plaintiff in error, it is ordered that the writ of error, returnable into the United States Circuit Court of Appeals for the Fifth Circuit, be allowed as prayed for; the same is to be returnable in the said Court within thirty days from this date on the plaintiff giving bond in the sum of twelve thousand dollars, conditioned and payable according to law, to be approved by the Clerk of the Circuit Court at Birmingham; let supersedeas issue.

This the 9th day of March, 1897.

ALECK BOARMAN, Judge.

[Endorsed.]
Filed in Clerk's office this 9th March, 1897.
N. W. TRIMBLE, Clerk.

APPEAL AND SUPERSEDEAS BOND.

Know All Men by these Presents, That we, the Tennessee Coal, Iron & Railroad Company, a corporation, as principal, and the American Surety Company, of New York, a body corporate under the laws of the State of New York, as sureties, are held and firmly bound unto Frank H. Pierce in the full and just sum of twelve thousand ($12,000.00) dollars, to be paid to the said Frank H. Pierce, his certain attorney, executors, administrators or assigns: to which payment well and truly to be made, we bind ourselves, our successors, [illegible]tly and severally, by these presents. Sealed with our seals, and dated this 26th day of February, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas, lately at a regular term of the Circuit Court of the United States, for the Southern Division of the Northern District of Alabama, in a suit pending in said Court between Frank H. Pierce, as plaintiff, and the Tennessee Coal, Iron & Railroad Company, as defendant, a judgment was rendered against the said Tennessee Coal, Iron & Railway Company, and the said Tennessee Coal, Iron & Railroad Company having obtained a writ of error, and filed a copy thereof in the Clerk's office of the said Court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Frank H. Pierce, citing and admonishing him to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, La., within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Tennessee Coal, Iron & Railroad Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make said plea good, then the above obligatio to be void; else to remain in full force and virtue.

TENNESSEE COAL, IRON & RAILROAD CO., [Seal]
By WALKER PERCY, Attorney. [Seal]
AMERICAN SURETY CO., of New York, [Seal]
By DAVID A. REAPERS, 2d Vice-Pres, Atty. [Seal]
Sealed and delivered in presence of ———.
[SEAL.]

Approved by—
ALECK BOARMAN,
Judge.

PLAINTIFF'S BILL OF EXCEPTIONS.

F. H. Pierce, Plaintiff,

vs.

Tennessee Coal, Iron & Railroad Co., Defendants.

Circuit Court of the United States at Huntsville, Ala.

Be it remembered at the trial of the above cause the following proceedings were had:

The plaintiff introduced and read in evidence the contract sued on and introduced evidence tending to prove the allegations of the complaint. The plaintiff also introduced evidence showing that the plaintiff at the time of his discharge by defendant from its employment in May, 1891, was 55 years of age; that he was then and has been since in good health, and that he was addicted to no habits of drinking or otherwise affecting his health and expectancy of life, and introduced the American Tables of Mortality used by insurance companies, showing the expectancy of life of plaintiff at the time of his discharge from defendant's employment, and at the time of the trial. But the Court announced that it would allow no recovery on the contract beyond the installments of wages due and in de-

fault up to the date of the trial, and that it would entertain a motion from the defendant to exclude all evidence as to the age, health and expectancy of life of the plaintiff on the ground that it was immaterial and irrelevant, and because damages for the expectancy of life was a matter too vague and uncertain to be allowed, and thereupon the defendant moved the Court to rule out and exclude all evidence relating to the health and habits and expectancy of life of the plaintiff on the ground that damages could not be allowed beyond the day of trial, which motion being heard by the Court was granted and all such evidence was excluded, and to this action of the Court the plaintiff then and there, and at the time of the ruling, duly excepted. To raise the same point plaintiff asked the Court to give the following instructions to the jury which were in writing and were asked separately and severally, and which the Court severally and separately refused, and to which several refusals the plaintiff separately and severally and duly excepted, while the jury were at the bar, and before retiring to consider their verdict.

1. If the defendant, after making the contract in evidence, and before the bringing of this suit, refused to make the monthly payments therein stipulated to be made, and to furnish the articles therein agreed to be furnished, and refused to further employ the plaintiff, it thereby committed a breach of the contract entitling the plaintiff to bring an action, and to recover therein all damages to date of such action and the trial thereof, and what will probably and reasonably be sustained by him thereafter during the period of his life if his disability is permanent. And in this connection the jury may consider the plaintiff's age and physical condition at the time of his discharge, and how far he will likely fall short of being able to earn the wages he was to get under the contract, and he would be entitled to recover the present value of the wages stipulated to be paid and articles to be furnished under the con-

tract, less such sum as the jury may, under the evidence and having regard to plaintiff's condition, find he can earn in the future.

2. If the defendant after making the contract sued on and before the suit refused further to pay the plaintiff and to furnish the articles stipulated to be furnished, and refused to employ the plaintiff and discharge him, the plaintiff is entitled to full benefit of his contract, which is the present value of the money agreed to be paid, and the articles to be furnished under the contract for the period of his life if his disability is permanent, less such sum as the jury may find the plaintiff may be able to earn in the future, and may have been able heretofore to earn, and less such loss as defendant may have sustained from the loss of plaintiff's service without defendant's fault.

And this is signed as plaintiff's bill of exceptions, in pursuance of the order of the Court and written consent of counsel.

(Signed) ALECK BOARMAN,
Judge.

We consent to the above bill of exceptions
WALKER PERCY,
Attorney for Defendant.

[Endorsed.]
Filed February 23, 1897.
N. W. TRIMBLE, Clerk.

PETITION FOR WRIT OF ERROR AND ASSIGNMENTS OF ERROR BY FRANK H. PIERCE.

In the Circuit Court of the United States for Southern Division of the Northern District of Alabama.

Frank H. Pierce, Plaintiff in Error,

vs.

Tennessee Coal, Iron and Railroad Co., Defendant in Error.

To the Honorable Judges of the United States Circuit Court:

The petition of Frank H. Pierce respectfully shows unto your honor that in the record and proceedings of the Circuit Court of the United States for the Northern District of Alabama, Southern Division, there hath intervened in a certain cause therein pending, wherein your petitioner is plaintiff and the said defendant in error is defendant, manifest error to his injury, as is particularly and specially shown in the assignments of error, which is hereto attached as part of this petition.

And petitioner prays that your honor will direct that a writ of error be issued to the said Circuit Court of the United States for the Northern District of Alabama, Southern Division, that the record and proceedings in said cause may be returned into the United States Circuit Court of Appeals for the Fifth Circuit, and that the rulings and judgment of said Circuit Court may be held to be error, and the said judgment be reversed, and said cause remanded to said Circuit Court for further proceedings; and you petitioner will ever pray.

GUNTER & GUNTER,
and ROBERT C. REDUS,
Attorneys for Plaintiff in Error.

We hereby waive issuance and service of citation.

WALKER PERCY,
Attorney for Defendant.

ASSIGNMENTS OF ERROR BY PLAINTIFF.

In the Circuit Court of the United States for the Southern

Division of the Northern District of Alabama.

Frank H. Pierce, Plaintiff in Error,

vs.

Tennessee Coal, Iron & Railroad Co., Defendant in Error.

Now comes the plaintiff in error by his attorneys, and says and alleges that in the record and proceedings of the Circuit Court of the United States for the Southern Division of the Northern District of Alabama, in a certain cause between the defendant in error, the Tennessee Coal, Iron & Railroad Company, and the plaintiff in error, said Frank H. Pierce, there has intervened to his prejudice manifest error, and he assigns error as follows, to-wit:

1. That the Court erred in excluding from the jury, upon motion of defendant, competent evidence introduced by plaintiff, viz:

"That plaintiff was 55 years of age at the time of his discharge by defendant in May, 1891; that plaintiff was then and has been in good health since; that he was addicted to no bad habits of drinking or otherwise effecting his health and expectancy of life, the American tables of mortality used by insurance companies showing the expectancy of life of plaintiff at the time of the discharge from defendant's employment and at the time of the trial.',

2. The Court erred in giving to the jury the following charge, viz:

"No recovery on the contract beyond the installments of wages due and in default up to the date of the trial, can be allowed by the jury in estimating the amount of plaintiff's damages."

3. The Court erred in refusing to give to the jury at the request of plaintiff the following written charge, No. 1, viz:

"If the defendant after making the contract in evidence and before the bringing of this suit, refused to make

the monthly payments therein stipulated to be made and to furnish the articles therein agreed to be furnished, and refused to further employ the plaintiff, it thereby committed a breach of the contract entitling the plaintiff to bring an action, and to recover therein all damages to date of such action and the trial thereof, and what will probably and reasonably be sustained by him thereafter during the period of his life if his disability is permanent. And in this connection the jury may consider the plaintiff's age and physical condition at the time of his discharge and how far he will likely fall short of being able to earn the wages he was to get under the contract, and he would be entitled to recover the present value of the wages stipulated to be paid and articles to be furnished under the contract, less such sum as the jury may, under the evidence, and having regard to plaintiff's condition find he can earn in the future."

4. The Court erred in refusing to give to the jury at the request of plaintiff the following written charge No. 2, viz:

"If the defendant after making the contract sued on, and before this suit refused further to pay the plaintiff and to furnish the articles stipulated to be furnished, and refused to employ the plaintiff and discharged him, the plaintiff is entitled to full benefit of his contract which is the present value of the money agreed to be paid and the articles to be furnished under the contract for the period of his life if his disability is permanent, less such sum as the jury may find the plaintiff may be able to earn in the future and may have been able to heretofore earn, and less such loss as defendant may have sustained from the loss of plaintiff's services without defendant's fault."

GUNTER & GUNTER,
and ROBERT C. REDUS,
Attorneys for Plaintiff in Error.

[Endorsed.]

Filed in Clerk's office this 15th day of March, A. D., 1897.

N. W. TRIMBLE, Clerk.

MARCH TERM.

MONDAY MORNING, MARCH 15, 1897.

Court met pursuant to adjournment, present and presiding, the Hon. John Bruce, Judge of the District Court of the United States for the Middle and Northern District of Alabama; Emmet O'Neal, United States Attorney; Clerk and Marshal.

Frank H. Pierce, Plaintiff in Error,

vs.

Tennessee Coal, Iron & Railroad Co., Defendant in Error.

Upon reading the petition of Frank H. Pierce, plaintiff in error, it is ordered that the writ of error returnable into the United States Circuit Court of Appeals for the Fifth Circuit be allowed as prayed for, the same to be returnable in said Court within thirty days from this date.

This 15th day of March, 1897.

(Signed) JOHN BRUCE,
Judge.

[Endorsed.]
Filed March 15, 1897.
N. W. TRIMBLE, Clerk.

WRIT OF ERROR.

UNITED STATES OF AMERICA, ss.

The President of the United States;

To the Honorable the Judge of the Circuit Court of the United States for the Southern Division Northern District of Alabama; Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between the Tennessee Coal, Iron & Railroad Company, defendant in error, and Frank H. Pierce, plaintiff in error, a manifest error hath happened, to the great damage of the said Frank H. Pierce as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, together with this writ, so that you have the same at New Orleans, La., within 30 days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the [SEAL] United States, the 15th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

(Signed) N. W. TRIMBLE,

Clerk of the Circuit Court of the United States, Southern

Division of the Northern District of Alabama.
Allowed by
(Signed) JOHN BRUCE, Judge.

[Endorsed.]
Filed March 15, 1897.
N. W. TRIMBLE, Clerk.

AGREEMENT OF COUNSEL.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Frank H. Pierce

vs.

The Tennessee Coal, Iron & Railroad Company.

We hereby agree to have only one record for use in the United States Circuit Court of Appeals in this cause on writs of error, sued out by both parties in this cause. The plaintiff, Frank H. Pierce, also agrees to pay for the printing and preparation of one-half of the complaint and all of the costs of printing his bill of exceptions, his writ of error and assignment of errors, and the Tennessee Coal, Iron & Railroad Company agrees to pay for the balance.

March 15, 1897.

GUNTER & GUNTER,
and ROBERT C. REDUS,
Attorneys for Plaintiff.
WALKER PERCY,
Attorney for Defendant.

[Endorsed.]
Filed in Clerk's Office this 15th March, 1897.
N. W. TRIMBLE, Clerk.

CLERK'S CERTIFICATE.

I, N. W. Trimble, Clerk of the Circuit Court of the United States for the Northern District of Alabama, hereby certify that the foregoing pages, numbered from 1 to 70, inclusive, contain a true and correct transcript of the proceedings and record in a certain cause lately pending and determined in said Circuit Court, wherein Frank H. Pierce was plaintiff and the Tennessee Coal, Iron & Railroad Company, a body corporate, was defendant, as the same now appears of record and on file in my office.

In testimony whereof, I hereunto subscribe my name and cause the seal of said Circuit Court to be affixed, this 26th day of March, A. D. 1897.

[SEAL.]

N. W. TRIMBLE,

Clerk U. S. Cir. Court Nor. Dist. Ala.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

NOVEMBER TERM, 1896. May 24, 1897.

(Extract from Minutes).

Tennessee Coal, Iron & Railroad Company
vs.
Frank H. Pierce.
} No. 590.

This cause was regularly called this day and was argued by Mr. W. A. Gunter for Frank H. Pierce, and the further hearing postponed until tomorrow.

NOVEMBER TERM, 1896. May, 1897.

(Extract from Minutes).

Tennessee Coal, Iron & Railroad Company
vs.
Frank H. Pierce.
} No. 590.

This cause came on again to be heard and was submitted to the court after further argument by Mr. W. A. Gunter for Frank H. Pierce, and by Mr. W. I. Grubb for the Tennessee, Coal, Iron & Railroad Company.

NOVEMBER TERM, 1896. June 11, 1897.

(Extract from Minutes).

Tennessee Coal, Iron & Railroad Company
vs.
Frank H. Pierce.
} No. 590.

This cause came to be heard on the transcript of the record from the Circuit Court of the United States for

the Northern District of Alabama, and was argued by counsel.

On Consideration Whereof. It is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause, be, and the same is hereby reversed and this cause remanded to said Circuit Court for further proceedings in accordance with the views expressed in the opinion of this court rendered in this cause.

It is further adjudged that the defendant in error, Frank H. Pierce, be condemned to pay the costs of this court for which execution may issue out of said Circuit Court. Opinion:

McCormick, Circuit Judge.

Frank H. Pierce, the defendant in error, brought his action in the State Court of Alabama against the Tennessee, Coal, Iron & Railroad Company, plaintiff in error, on January 22, 1892. His declaration filed on the same day is as follows:

"The plaintiff claims of the defendant, a body corporate, incorporated under the laws of the State of Tennessee, and resident and doing business in said State of Alabama, county of Jefferson, the sum of fifty thousand dollars, as damages for the breach of a certain contract in writing entered into between the plaintiff and the defendant by its agent, in substantially the words and figures following, to-wit:

"4th of June, 1890. Whereas, I, F. H. Pierce, while in the employ of the Tennessee, Coal, Iron & Railway Company, Pratt Mines Division, as a machinist was seriously hurt by a trip of tram cars on the main slope of the mine known as Slope No. 2, and operated by the Tennessee Coal, Iron & Railroad Company, under circumstances which I claim render the said company lia-

ble to me for damages, but, whereas, they disclaim any liability for said accident or injuries to me resulting from same, and both parties being desirous of settling and compromising said matter; and, whereas, the said Tennessee Coal, Iron & Railroad Company did make me a proposition on the —— day of November, 1888, said accident having occurred on the 21st day of May, 1888, that they would furnish me such supplies from the commissary at No. 2 prison as I might choose to take; pay me regular wages while I was disabled, and give me my coal and wood for fuel at my dwelling, and the benefit of the convict garden at No. 2; and, whereas, said proposition was accepted by me and carried out by the said company; and, whereas, in May, 1889, after I had resumed work, a further proposition was made to give me work, such as I could do, paying me therefor the wages paid me before said accident, that is, $60 a month, and, in addition, free house rent; and, whereas, said agreement has been faithfully kept by both parties; and, whereas, on the 4th day of June, 1890, it is mutually agreed between myself and the said company that it will be better to give me the house rent than the supplies of about equal amount from the commissary. Now, therefore, it is agreed that, in view of the above propoiitions which have been faithfully carried out, that my wages from this date are to be $65 per month, and, in addition, I am to have, free of charge, my coal and wood necessary for my household use at my dwelling, and the same benefit from the garden as is had by others who are allowed the garden privilege, and I, on my part, agree and bind myself to release the said company from any and all liability for said accident, or from injuries resulting to me from it, or the effects of it, and agree that this is to be a full and satisfactory settlement of any and all claims which I might have against said company.'

And plaintiff avers that, in and by said agreement, the said defendant, for the consideration therein mentioned, became liable to pay to the plaintiff monthly during his life the wages stipulated therein, to be paid to him monthly, to-wit: the sum of sixty-five dollars, and to furnish him at his dwelling, free of charge, the coal and wood necessary for his household use, and to allow him the same benefit from the garden of the said defendant as is had by others who are allowed the garden privilege; and plaintiff avers that others then had, and since have had, the free use of the garden of said defendant for vegetables for domestic use, and that this privilege is worth the sum of five dollars per month; and plaintiff avers that he has at all times been ready and willing, and offered to do for said defendant such work given to him to do as he was able to do, and that he had labored at the same for such reasonable time as he was able to work and bound to work under said contract.

And plaintiff avers that by the injuries received by him from said accident mentioned in said contract, he was permanently disabled in the use of his legs and hands, and that he was so otherwise injured thereby that his strength and health is such that he is incapacitated to reasonably do more work for the said defendant than he has done and offered to do since the said contract was entered into. And that he has at all times since the said contract was entered into, fully carried out and performed the stipulations on his part to be done and performed. But the plaintiff avers that the said defendant has, without any reasonable ground for so doing, abandoned said contract and refused to carry the same out, claiming that there is no obligation upon it to pay plaintiff the wages therein stipulated to be paid longer than it suits its pleasure to do so, and, accordingly, said defendant has wholly neglected and re-

fused to be governed by the terms of said contract, and has failed and refused to pay plaintiff the sum of sixty-five dollars for six months last past, before the commencement of this suit, and has failed and refused to furnish the defendant at his dwelling the coal and wood necessary for his household use for the same period, and plaintiff avers that the value of the coal and wood necessary for his household use is worth the sum of five dollars per month, and that said defendant has wholly and purposely disregarded and refused to abide by the obligations of said contract, for the said period of six months last past, before the commencement of this suit, and has wholly and entirely abandoned said contract, and discharged the plaintiff from its service.

Wherefore, the said defendant became liable to pay to the plaintiff his reasonable damages, which plaintiff avers was and is the sum of fifty thousand dollars for its breach and abandonment of the stipulations of the said contract above set out; and being so liable, and in consideration thereof, the said defendant promised to plaintiff on, to-wit: the first day of February, 1891, to pay plaintiff the sum of fifty thousand dollars, but though often requested so to do, has hitherto neglected and refused, and still neglects and refuses to pay the same, to the damage of the plaintiff fifty thousand dollars, for which he sues."

On January 29, 1894, the plaintiff in error, defendant in the State Court, was allowed to withdraw its plea and file demurrers to the complaint. The demurrer was sustained by the court, and the plaintiff declining to amend, the court rendered judgment in favor of the defendant.

From this judgment of the State Circuit Court the plaintiff in that action appealed to the Supreme Court of the State of Alabama. The record before us does not show any further action in the State Court. It does

show that upon application of plaintiff in error presented March 23, 1896, to the Circuit Court of the United States, that court granted an order for the removal of the cause from the State Court to the Circuit Court. It appears that the defendant demurred to plaintiff's complaint in the Circuit Court, and that the demurrer was overruled January 4, 1897. On the same day, the defendant filed the following pleas:

"1. The defendant, for answer to the complaint, says that it denies each and every allegation therein contained.

2. The defendant for further answer to the complaint, says that the plaintiff, under and by the terms of the contract set out in the complaint, contracted to perform for the defendant during the term thereof, such service as he was able to perform, in consideration for the promises made by defendant therein, and the defendant avers that the plaintiff thereafter became able to perform services for the defendant, and did in fact perform such service for some time thereafter; and that while engaged in the performance of such service, the plaintiff voluntarily, and without excuse therefor, refused to further perform such service as he was able to perform, and was in fact performing for the defendant, as required by said contract, and the defendant thereupon discharged the plaintiff from its service; and the defendant avers that the plaintiff failed to comply with the conditions imposed upon him by said contract.

3. The defendant for further answer to the complaint, says that the contract upon which this action is founded is not executed by it or any one authorized by it to bind it in the premises, and defendant makes oath that this plea is true."

Plaintiff joined issue on the first and third pleas, and demurred to the second plea, on the ground that said plea does not go to the whole consideration of the contract and is no answer to the entire action. Plaintiff's demurrers to the second plea were sustained. On the trial there was a substantial conflict in the testimony admitted, but there was credible positive testimony tending to establish the defendant's second plea. The plaintiff testified on his own behalf, and being cross-examined by the defendant's counsel, was asked to state the conversation and agreement made and had between him and Mr. McCormack with reference to what the company would do for him when the first agreement was made, in November, 1888. To this question plaintiff, by counsel, objected, on the ground that this agreement was contained or merged in the original agreement, which was in writing. The court sustained the objection and the defendant excepted. The defendant's counsel also asked plaintiff to state what the agreement between him and Mr. McCormack was which was made in May, 1889. The plaintiff by counsel, made the same objection to this question, which was sustained by the court, and the defendant excepted.

The court gave to the jury the following written instruction, and no other, either oral or written:

"Under the evidence in this case, I charge you that the plaintiff is entitled to recover in this action, and the measure of his damages is, the aggregate amount of all the installments of seventy dollars for each month in default and unpaid, from the time of the commencement of the employment under the contract sued on until the time of the trial, with interest on each installment from the time it fell due up to the time of the trial, which amounts, under the evidence, to the sum of $5,893.00."

In obedience to this instruction, the jury returned a verdict in favor of the plaintiff for $5,893.00, on which judgment was duly rendered, and the defendant sued out this writ of error.

We cannot affirm this judgment, and we find it very difficult to discuss the propositions which the case presents, because they appear to us to be anomalous. On no view of the pleadings and proof which we can take was the trial court justified in directing a verdict in this case. The charge given to the jury plainly withdraws the case from their consideration, and their action, as far as they acted, was purely clerical.

After hearing the above oral arguments submitted by counsel for the respective parties and carefully considering the elaborate briefs filed by each, and thoroughly examining the record, we remain at a loss to know exactly what view of the case induced the action of the Circuit Court. As has been already said, the record in this case does not bring up before us any judgment of the State Court, except the action of that court sustaining the demurrer to the plaintiff's declaration and dismissing the plaintiff's cause of action. We infer from the case remaining in the State Court and being removed to the Circuit Court, that the action of the State Circuit Court was reversed by the Supreme Court. Both counsel have referred to an opinion of the Supreme Court of Alabama reversing that judgment and constructing the contract declared on in this case. There are suggestions in the brief in reference to the suppression of a part of the opinion, and some action, not very intelligible, on an application for rehearing. The only thing that does satisfactorily appear is that the Supreme Court of Alabama decided that the demurrer to plaintiff's action was improperly dismissed, and that the judgment of the State Circuit Court was reversed and the cause remanded, but the action thereon is not pre-

sented in a way to enlighten or embarrass us in the consideration of the contract as it appears in the proceedings of the Circuit Court, and we are not able to construe that contract in the manner that the judge of the Circuit Court must have construed it in order to have ruled as he did on the admission of evidence, and to give the instruction embraced in this charge to the jury.

It appears on the face of the paper declared on that plaintiff was injured on May 21, 1888; that the defendant verbally agreed to furnish him such supplies from the commissary as he might choose to take, to pay him regular wages while he was disabled, and to give him coal and wood for fuel at his dwelling, and the benefit of the convict garden, all of which the defendant did, or, in the language of the contract, carried out. It appears further on the face of the contract, that after the plaintiff had resumed work there was a verbal agreement made in May, 1889, between the parties to the effect that he should do such work as he could do, and that the defendant would pay him therefor $60 a month, and, in addition, free house-rent, and that this agreement was faithfully kept by both parties until June 4, 1890, when the writing declared on passed between the parties, which, after reciting the facts just stated, continues in these words, viz:

"It is mutually agreed between myself and the said company that it will be better to give me the house rent than the supplies of about equal amount from the commissary. Now, therefore, it is agreed that, in view of the above propositions which have been faithfully carried out, that my wages from this date are to be $65 per month, and, in addition, I am to have, free of charge, my coal and wood necessary for my household use at my dwelling, and the same benefit from the garden as is had

by others who are allowed the garden privilege; and I, on my part, agree and bind myself to release the said company from any and all liability for said accident, or from injuries resulting to me from it, or the effects of it, and agree that this is to be a full and satisfactory settlement of any and all claims which I might have against said company."

It will be observed that the date of this writing is more than three years removed from the date of the injury suffered by the plaintiff. By the law of Alabama, such a cause of action is subject to the plea of limitation of one year. Beside what fully appears on the face of this writing, the proof abundantly shows that the plaintiff resumed work within the first year after receiving his injury, and that he had received wages and allowances from the time of his injury up to April 1, 1891. The plaintiff contends that the last paragraph of the writing declared on shows the yielding of a consideration, which the defendant cannot restore, and that this requires that the contract shall be construed as a contract for the permanent hiring of plaintiff by the defendant. The counsel suggests that the defendant fraudulently set a trap for the plaintiff and induced him to enter into this contract, in order to escape liability for the personal injuries that plaintiff had sustained. It does not clearly appear to be that this consideration, if it was a consideration, has passed beyond the power of the defendant to restore, or of the plaintiff to claim, to the extent that he was in a condition to claim it at the date of the execution of the writing. The practical effect of the construction claimed by the plaintiff, and shown by the verdict in this case, shocks the common judgment and conscience, and to support it would require express terms in the writing. Such express terms do not appear. On the contrary, to us it appears that the de-

fendant had been dealing tenderly with the plaintiff, on account of the very severe injuries which the plaintiff had received in the defendant's service; that, while all along denying its liability for those injuries, it had done what it could to alleviate them, and this condition of friendly accord had progressed for more than three years. Plaintiff probably reiterating his claim against the defendant for the injuries, or dwelling upon it, and the defendant desiring to have the relations between the parties put upon a business basis, it was certainly not a matter of small consequence to the plaintiff to secure the employment which in this written agreement the defendant expressed itself willing to continue. The proof shows that the service the plaintiff could render and was rendering, and had been rendering for two years after his wounds had healed, was reasonably worth about the wages and the allowances which the defendant consented to give. It shows also that he was not quite as efficient as a man with two good hands and two sound legs, would have been with like skill and experience, but, to our minds, there is nothing on the face of this paper indicates that the defendant, for a disputed claim that was thrice barred, was willing to give, or was giving, a binding contract to pay an annuity to a man fifty-five years old, at the rate of $840 a year, as long as he should live. His disability was fixed more than two years before the date of this writing. Exactly how much he was disabled was known not only to him but to the defendant. It is easier to say what the contract does not mean than to declare authoritatively and clearly what is the proper construction of the contract. The defendant contends that it is an employment by the month, and, like every other such employment, subject to be discontinued, at the will of either, at the expiration of any month, or at any time for adequate cause. This construction comports more with the terms of the

writing itself, and we conclude it is the only intelligible construction to be put upon the writing.

It appears to us that the plaintiff has been led into this contract and into the loss of valuable employment, by his own misconstruction of the contract. His own testimony on the trial of this case showed clearly that in his dealings with the agent of the defendant he relied upon the unfounded belief that he had the defendant bound to pay him an annuity of $70 a month for the rest of his life, and that he could work, or not, and as he pleased—a kind of servant that would not be very valuable to any employer.

We conclude that the demurrer to the declaration should have been sustained; and for the error of the court in overruling the demurrer—without further comment on other errors indicated.

The judgment of the Circuit Court is reversed, and the cause is remanded to be proceeded with in that court in accordance with the views we have expressed.

PARDEE, J., dissents.

I, J. M. McKee, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing pages numbered from 71 to 82, inclusive, contains a true and correct transcript of all the orders, opinions and decrees entered in said United States Circuit Court of Appeals in the cause lately pending therein wherein the Tennessee Coal, Iron & Railroad Company were plaintiff in error and Frank H. Pierce was defendant in error. No. 590, as fully and completely as the same now remains of record in my office.

Given under my hand and the Seal of the United States Circuit Court of Appeals hereto
[L. S.] affixed at the City of New Orleans this 6th day of September, A. D. 1897.

J. M. McKEE,
Clerk.

84 In Circuit Court of Appeals for the Fifth Circuit.

TENNESSEE COAL, IRON AND RAILROAD COMPANY, Plaintiff in Error,
vs.
FRANK H. PIERCE, Defendant in Error.

FRANK H. PIERCE, Plaintiff in Error,
vs.
TENNESSEE COAL, IRON AND RAILROAD COMPANY, Defendant in Error.

Agreement as to Return to Writ of Certiorari.

It is agreed between counsel for the respective parties in the above-entitled causes that the clerk of the circuit court of appeals may return this agreement, together with an agreement between the parties hereto, filed in the circuit court of appeals for the fifth circuit, amending the record in that court in certain particulars therein set out, as his return to the writ of certiorari from the Supreme Court of the United States to the circuit court of appeals for the fifth circuit, and it is agreed between the parties hereto that the record filed with the petition for the writ of certiorari in the Supreme Court of the United States by counsel for petitioner, together with the agreement filed in the circuit court of appeals for the fifth circuit for the amendment of the printed record in certain particu-
85 lars, be, and they do hereby, constitute the record of the above-entitled causes in the Supreme Court of the United States for all purposes whatsoever.

In witness whereof we have hereto set our hands this 22nd day of November, 1897.

W. A. GUNTER,
ROBERT C. REDUS,
Attorneys for Frank H. Pierce.
WALKER PERCY,
WM. I. GRUBB,
Attorneys for Tennessee Coal, Iron & Railroad Company.

Endorsed: Agreement as to return to certiorari. Filed Nov. 26, 1897. J. M. McKee, cl'k.

86 FRANK H. PIERCE
vs.
TENNESSEE COAL, IRON AND RAILROAD COMPANY.

It is agreed between counsel for each party in the above-entitled cause that the plaintiff in error in the original case shall take nothing from its exception to the introduction of the contract sued on which appears on page 33 of the record, and shall be confined in assigning error predicated on the admission of the contract sued on in evidence to the exception to the admission of said contract ap-

pearing on page 34 of the record, the first exception being a mistake which is to be corrected on the record.

It is also agreed that the record shall be considered as affirmatively showing that the demurrers of the plaintiff in error to the original complaint were reinterposed to the complaint as amended.

April 10, 1897.

W. A. GUNTER,
R. C. REDUS,
For Plaintiff Below.
WALKER PERCY,
W. I. GRUBB,
For Defendant Below.

Endorsed: No. 590. Tenn. C., I. Co. *v.* Frank H. Pierce. Agreement as to record. Filed Apr. 14, 1897. J. M. McKee, cl'k.

87 I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing three pages contain true and correct copies of the agreement of counsel as to record, filed April 14, 1897, and also of the agreement of counsel as to the return to the writ of certiorari, filed November 26, 1897, in cause No. 590—Tennessee Coal, Iron and Railroad Company, plaintiff in error, *v.* Frank H. Pierce, defendant in error, and Frank H. Pierce, plaintiff in error, *v.* Tennessee Coal, Iron and Railroad Company, defendant in error—lately pending in said court, as the same now remains on file and of record in my office.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 7th day of December, A. D. 1897.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

88 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Tennessee Coal, Iron & Railroad Company is plaintiff in error and Frank H. Pierce is defendant in error, and Frank H. Pierce is plaintiff in error and The Tennessee Coal, Iron & Railroad Company is defendant in error, which suit was removed into the said circuit court of appeals by virtue of writs of error to the circuit court of the United States for the northern district of Alabama, and we being willing for certain reasons that the said cause

and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
89 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

90 [Endorsed:] Supreme Court of the United States. No. 469. October term, 1897. Frank H. Pierce *vs.* The Tennessee Coal, Iron & R. R. Co. Writ of certiorari. Filed Nov. 26, 1897. J. M. McKee, cl'k.

United States Circuit Court of Appeals, Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby make as a return to this writ the certified copy hereto attached of the agreement of counsel filed in said United States circuit court of appeals in the within-named cause on the 26th day of November, 1897, and as a further return, as required by the above-mentioned agreement, do hereto attach a certified copy of the agreement of counsel filed in said cause on the 14th day of April, 1897.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 7th day of December, A. D. 1897.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

91 [Endorsed:] Case No. 16,682. Supreme Court U. S., October term, 1898. Term No., 174. Frank H. Pierce, petitioner, *vs.* The Tennessee Coal and Iron Company. Writ of certiorari and return. Filed Dec. 10, 1897.